

SENATE BILL 3299
By Cooper

AN ACT to amend Tennessee Code
Annotated, Title 49, Chapter 7; Title
49, Chapter 8 and Title 49, Chapter 9
relative to public higher education.

WHEREAS, public institutions of higher education have a responsibility to be prudent in their expenditure of public funds and to ensure that the highest possible portion of those funds goes toward fulfilling their primary missions of education of students and research for the benefit of the citizens of Tennessee; and

WHEREAS, issues have arisen to show that the state board of regents and the University of Tennessee board of trustees higher education must have tighter controls and greater accountability on fiscal matters at their respective institutions; and,

WHEREAS, there is a need for each higher education governing board to have an audit committee which that will employ an independent internal auditor that will report directly to the respective audit committee and governing board;

WHEREAS, action must be taken to assure appropriate oversight of public higher education institutions; now therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Sections 2 through 5 of this act shall be known and may be cited as the “Higher Education Accountability Act of 2004”.

SECTION 2. (a) The board of regents created under Title 49, Chapter 8, Part 2 and the board of trustees of the University of Tennessee created under Title 49, Chapter 9, Part 2 shall each create an audit committee. Each board is authorized to select one or more

certified public accountants or other qualified citizens who are not members of such board to serve on the audit committee.

(b) Each audit committee shall employ a person qualified by training and experience to serve as internal auditor. The internal auditor shall report directly to the audit committee and respective board and shall be removable only for cause by a majority vote of the respective board. The internal auditor shall file a report on his or her audit work with the audit committee at least annually.

SECTION 3. (a) The internal auditor shall establish a process by which students, employees, taxpayers or other citizens may confidentially report suspected illegal, improper, wasteful or fraudulent activity. The detailed information received pursuant to such a report of illegal, improper, wasteful or fraudulent activity or any on-going investigation thereof shall be considered working papers of the internal auditor and shall be confidential under the provisions of Tennessee Code Annotated, Title 10, Chapter 7. Each year the internal auditor shall include within his or her annual report a summary of all completed audit activities pursuant to this part.

(b) The provisions of § 8-50-116, shall apply to all higher education employees. In addition, no higher education employee shall suffer any of the actions specified in § 8-50-116 for reporting to or cooperating with auditors or for reporting any facts to the state board of regents or the University of Tennessee board of trustees or the audit committees of either board. Any person who knowingly and willingly retaliates or takes adverse action of any kind against any person for reporting alleged wrongdoing pursuant to the provisions of this part commits a Class A misdemeanor.

SECTION 4. The board of regents created under Title 49, Chapter 8, Part 2 and the board of trustees of the University of Tennessee created under Title 49, Chapter 9, shall establish a policy for quarterly reports by their respective system president or chancellor, and presidents or chancellors detailing expenditures made by, at the direction of or for the benefit of the chancellor

or president. It is the legislative intent that such policy require the report of discretionary expenditures which shall include, but not be limited to, unrestricted gifts, foundation funds, athletic funds, sponsorship fees, licenses and royalty funds, and other such funds that would not be included in the operating budget for the chancellor's or the president's office. Chancellors or presidents shall not have the authority to grant themselves an exception to fiscal, spending or travel policies established by the board or by statute.

SECTION 5. Members of any governing board of public higher education shall be subject to removal from the board for neglect of duty. The governor may petition for a board member's removal due to neglect of duty and such removal shall be effective upon a majority vote of the voting board members.

SECTION 6. Tennessee Code Annotated, Section 49-7-107(a) is amended by adding the following new language:

All such agreements shall be in writing and filed with governing board of the university or college and the Tennessee higher education commission.

SECTION 7. Tennessee Code Annotated, Section 49-7-107 is further amended by adding the following new language as new subsections:

(c) All books, papers, records, and correspondence of a foundation created for the benefit of a state college or university are public records except:

(1) Information relating to donors who have requested anonymity; and

(2) Work papers and correspondence, including correspondence by electronic mail, with any person soliciting a donation or gift for the foundation.

(d) If any officer, board member, employee or contractor of a foundation created for the benefit of a state college or university has a financial interest, direct or indirect, or has an ownership interest in any firm, corporation, or other entity having an interest in any business or contracts with the college or university for which the foundation was created the officer, board member, employee or contractor shall immediately disclose, in writing,

such interest to the foundation and governing board of the college or university, and such disclosure shall be entered in the minutes of the foundation and of the governing board. Such officer, board member, employee or contractor must refrain from participation in any discussion or activity by the foundation in connection with such business or contract. Failure to disclose such interest shall constitute misconduct in office and such officer, board member, employee or contractor may, after proper notification and opportunity to be heard, be disqualified from being an officer, board member, employee or contractor with or employment by the foundation by a majority vote of the board of directors and may not be reappointed to or reemployed by the foundation for a period of ten (10) years or until such conflict has been removed, whichever is longer.

(e) The board of directors for a foundation created for the benefit of a state college or university shall establish and adopt a code of ethics that shall apply to and govern the conduct of all members of the board and the foundation's employees. Such code of ethics shall be filed with the governing board of the college or university for whose benefit the foundation was created.

SECTION 8. This act shall take effect upon becoming law, the public welfare requiring it.